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June 8, 2020

VIA ECF

The Honorable Loretta A. Preska
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: ***Giuffre v. Dershowitz, Case No. 19-cv-3377-LAP***
Amended Counterclaims

Dear Judge Preska:

I write on behalf of Plaintiff Virginia Giuffre in response to Ms. Oren's June 4, 2020, email message covering Defendant Alan Dershowitz's courtesy copy of his Amended Counterclaims. We do not share Defendant's understanding that the filing of the Amended Counterclaims requires the Court to dismiss the pending motion to dismiss (Doc. 119) as moot. To the contrary, the Second Circuit recently made clear that where the amended pleading suffers from the same defects complained of in a pending motion to dismiss, the Court has the discretion to "consider the merits of the motion, analyzing the facts as alleged in the amended pleading." *Pettaway v. Nat'l Recovery Solutions, LLC*, 955 F.3d 299, 303–04 (2d Cir. 2020).

Nor do we understand the basis for Defendant's expectation that no "such motion [to dismiss] will be refiled" by Plaintiff. Although Plaintiff is not yet prepared to take a position on the new allegations (concerning a recent Netflix documentary) contained in Defendant's Amended Counterclaims, it is Plaintiffs' position that Defendant's original and still pending counterclaims for defamation and intentional infliction of emotional distress that are based on the allegedly defamatory statements contained in the original counterclaims—all of which remain in the amended pleading—continue to suffer from the defects identified in Plaintiff's memorandum of law in support of her pending motion (Doc. 120). As to those counterclaims, Plaintiff is willing to stand on her pending motion under *Pettaway*, or to withdraw that motion and file a new motion to dismiss the Amended Counterclaims, as the Court may direct to facilitate the Court's efficient and convenient review. In the event that the Court wishes to proceed with the pending motion, Plaintiff respectfully requests that her time to answer the Amended Counterclaims be stayed under FED. R. CIV. P. 12(a)(4).

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Respectfully,

s/ Charles J. Cooper
Charles J. Cooper

cc: Counsel of Record (via ECF)